

SHIRLEY THOMPSON
DUANE R. THOMPSON

IBLA 81-774

Decided August 25, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim to be abandoned and void. CA MC 38069.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: Jerrold E. Park, Esq., St. Maries, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken from a decision of May 14, 1981, by the California State Office, Bureau of Land Management (BLM), which declared the unpatented Wild Cat placer mining claim, CA MC 38069, to be abandoned and void because evidence of assessment work or a notice of intention to hold the claim had not been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1.

Appellants state that the required assessment work for the assessment year ending September 1, 1980, was, in fact, performed and evidence thereof duly recorded in accordance with State law. They contend that under the mining laws of the United States they have a vested property interest in the Wild Cat placer claim, which interest has not been abandoned by them, and which cannot be taken from them without due process of law. They argue that the regulations which conclusively presume an abandonment for failure to file timely evidence of assessment work are in violation of the Fifth Amendment of the United States Constitution.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file with the proper office of BLM on or before December 30 of each calendar year evidence of assessment work performed on the claim or a notice of intention to hold the claim. The section further provides that failure to file the required documents timely shall be conclusively deemed to be an abandonment of the unpatented mining claim. The regulations, 43 CFR 3833.2-1 and 3833.4, merely replicate the statute.

As the appellants did not file the required instrument with BLM on or before December 30, 1980, the claim was properly declared abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980). The filing of evidence of annual assessment work in accordance with state law does not constitute compliance with the recordation requirements of FLPMA where the claimant fails to file such evidence with BLM also. Omco, Inc., 55 IBLA 77 (1981). This Board has no authority to excuse lack of compliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Appellant's arguments on constitutional law cannot be considered by this Board. The Department of the Interior as an agency of the executive branch of the Government is not a proper forum to consider whether the recordation provisions of FLPMA are constitutional. However, the United States Court of Appeals for the Tenth Circuit has stated that the Secretary of the Interior has broad authority to promulgate rules and regulations to aid him in his administration of the public lands, and that the regulations he has promulgated to implement FLPMA do not transcend such authority. Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). Similarly, the Court of Appeals for the Ninth Circuit has stated that

statutes which are clearly arbitrary and unreasonable violate the Fifth Amendment's due process clause, but that the FLPMA requirements for filing of unpatented mining claims are not arbitrary or unreasonable. Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

